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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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नई दिल्ली, सोमवार, अगस्त 30, 2010/भाद्र 8, 1932

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NEW DELHI, MONDAY, AUGUST 30, 2010/BHADRA 8, 1932

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 11 अगस्त, 2010

आ.अ. 36(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2009 की निर्वाचन अर्जी संख्या 2 में, केरल उच्च न्यायालय का निर्णय तारीख 23 जुलाई, 2010 को इसके द्वारा यहां प्रकाशित करता है।

[निर्णय अंग्रेजी अधिसूचना में देखें]

[फा. सं. 82/केरल-लो.स./ (2/2009)/2010]

आदेश से,

तपस कुमार, प्रधान सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 11th August, 2010

O.N. 36(E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment of the High Court of Kerala dated 23rd July, 2010 in Election Petition No. 2 of 2009.

THE HIGH COURT OF KERALA

Tel. Address "Justitia"

ERNAKULAM

Telephone No. 2393901

KOCHI-682031

E.P. No. 2/09 L.A.A.

Post Box No. 2600

Dated : 27-7-2010

3427 GI/2010

From

THE REGISTRAR GENERAL
HIGH COURT OF KERALA.

To,

The Under Secretary (Legal),
Secretariat of the Election
Commission of India,
Nirvachan Sadan, Asoka Road,
New Delhi-110001.

Sir,

Sub:—Election to the House of People (Lok Sabha) from No. 9, Alathur Parliamentary Constituency, held on 16-4-2009, copy of the judgment in E.P. 2/09, dated 23-7-2010 forwarding of—

As required under Section 103 of the Representation of the People Act, 1951, I have the honour to inform you that Election Petition No. 2/09, filed by Sri P.A. Sekharan, S/o Appunni, residing at Pandayath House, P.O. Kyparamba, Puthur, 680546, challenging the election of the respondent, Sri P.K. Biju, S/o Kuttappan, Parayamparambil Veedu, Manjoor South P.O., Vaikom, Kottayam District from No. 9, Alathur Parliamentary Constituency, held on 16-4-2009 is dismissed by the Hon'ble Mr. Justice M. Sasidharan Nambiar.

An authenticated copy of the judgment dated 23-7-2010 in E.P. 2/09 is forwarded herewith.

Yours faithfully,

Sd/-

Registrar (Judicial)

Encl. : Authenticated copy
of the judgment dated 23-7-2010
in E.P. 2/09.

(1)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

The Honourable Mr. Justice M. Sasidharan Nambiar
Friday, the 23rd July, 2010/1st Sravana 1932

El. Pet. No. 2 of 2009 (Y)**PETITIONER**

P.A. Sekharan, S/o Appunni, aged 65 years Residing
at Pandiyath House, P.O. Kyparamba, Puthur-680546

By Adv. Sri K. Ramakumar, Senior Advocate
Sri J.R. Prem Navaz

Sri T. Ramprasad Unni

Respondent(s) : Respondents.

1. P.K. Biju S/o Kuttappan, aged 34 years,
Parayamparambil Veedu, Manjoor South P.O., Vaikom,
Kottayam District.
2. Mr. N.K. Sudhir, aged 44 years, S/o N.C. Kuttan,
Kunnappilly House, Peramangalam P.O., Thrissur
District-680545.
3. M. Bindu Teacher, aged 35 years, Anandalayam,
Kanniyampuram, Ottappalam, Palakkad District.
4. Dr. G. Sudevan, aged 61 years, DF8/129 (TC-4/1780),
Pandit's Colony, Kowdiar, Thiruvananthapuram.
5. K. Gopalakrishnan, aged 39 years,
Thamarathukulambu House, Ambattuparambu,
Ththamangalam 678 102, Palakkad District.
6. Biju K.K., aged 38 years, Manaparambil Veedu,
Nadavarambu P.O., Irinjalakuda, Thrissur District.
7. P.C. Biju, aged 36 years, Panachamoottil House,
Elipakulam, Kayamkulam, Alappuzha District.
8. C.K. Ramakrishnan, aged 43 years, Chathanthaga
House, Kinassery P.O., Palakkad District.
9. K.K. Sudhir, aged 44 years, Kallekkad Veedu, Kutanur
P.O., Palakkad District.

Adv. Sri G. Janardhana Kurup, Senior Advocate for R1

Sri Jhon K. George for R1

Sri C.K. Sajeev for R1

Sri P.K. Varghese for R1

Sri K.S. Arun Kumar for R1

Sri E.C. Bineesh for R1

Sri N.K. Shyju for R1

Smt. M.B. Shyni for R1

Smt. Ambika Devi for R1

Sri R. Jyothi Krishnan for R1

Sri V. Ramkumar Nambiar for R2

Sri Vincent Joseph for R7

Dr. V.N. Sankarjee for R7

This Election Petition having been finally heard on
2-6-2010, The Court on 23-7-2010 delivered the following :

M. Sasidharan Nambiar, J.

E.P. No. 2 of 2009

Dated this the 23rd day of July, 2010.

JUDGMENT

First respondent P.K. Biju was the successful candidate to Alathur Parliamentary Constituency of Kerala State in the Parliamentary elections conducted on 16-4-2009. Alathur Parliamentary Constituency was reserved for Scheduled Castes. First respondent was declared elected, on 16-5-2009, with a majority of 20960 votes. Second respondent was the nearest rival candidate. First respondent was a candidate of Communist Party of India (Marxist) and second respondent a candidate of Indian National Congress. There were nine candidates in the election. Respondents 3 to 9 are the other candidates. Election Petition is filed to declare that election of the first respondent is void and to declare his election illegal and to set it aside and to declare that second respondent, who secured the next largest number of votes, the successful candidate. The election petition is filed under Section 100(1)(a) of the Representation of the People Act on the sole ground that first respondent was not qualified to be chosen to fill that seat as under the Constitution and the Representation of the People Act he is not a member of the Scheduled Caste. Petition is filed in his capacity as an elector of the Parliamentary Constituency.

2. **Pleadings :** Petitioner claims to be a social worker and President of Adat Block of Indian National Congress. Alathur Parliamentary Constituency has been notified as a reserved Constituency solely for the members of Scheduled Caste in terms of Section 4(a) of Representation of the People Act. Therefore, only a member of the Scheduled Caste is qualified to contest the election. Respondents 2 to 9 are members of Scheduled Caste. Under Entry 54 of Constitution (Scheduled Caste Order) 1950 made by the President of India as amended by Parliament Pulayan, Cheramar, Pulaya, Pulayar, Cherama, Cheraman, Wyanad Pulayan, Matha and Matha Pulayan are the Scheduled Castes included in that entry. First respondent submitted the nomination on 26-3-2009 along with a declaration that he is a member of Pulayan caste. In support of the claim he produced a certificate issued from Taluk Office, Vaikom that he belongs to Hindu religion and Pulayan caste as per Suddhi certificate issued by Arya Samaj, Thiruvananthapuram and also Gazette Notification dated 19-8-2008. When the nominations were scrutinized, objections were raised that first respondent is not a member of Scheduled Caste and therefore he is not qualified to contest the seat reserved for the scheduled caste. The Returning Officer rejected the objection solely relying on the caste certificate and the suddhi certificate. In the election, first respondent was declared elected. The election of the first respondent is to be declared void as provided under Section 100(1)(a) of the Representation of the People Act as he was not qualified to be chosen to fill a seat reserved for Scheduled Caste. He was not a member of

scheduled caste on the date of submission of the nomination paper. First respondent is a Christian by birth. His parents were also Christians and they belonged to Manjoor Village of Vaikom Taluk of Kottayam District. Even in his school records, first respondent is shown as Christian. In his S.S.L.C. book also, it is so recorded. He passed the S.S.L.C. examination in March 1989. In spite of these facts by pressurizing the Tahsildar, Vaikom using his political clout, a certificate was obtained that he belongs to Pulayan caste by reason of Suddhi certificate. In Kerala a caste certificate that he is a member of scheduled caste can be issued, only as provided under the provisions of Kerala (Scheduled Caste/Scheduled Tribe Regulation of Issuing Community Certificate) Act, 1996. To obtain such a certificate, an application shall be submitted in such form and in such manner and the competent authority duly notified shall after following the prescribed procedure and satisfying itself about the genuineness or otherwise of the claim shall issue a community certificate. The Caste certificate produced by the first respondent and issued to him by the Tahsildar is not in accordance with the provisions of the said Act. Therefore it should not have been relied on by the Returning Officer. First respondent has been living as Christian and participating in various Christian religious programmes in the Churches and also functions in Manjoor and other places. Pulayan community never accepted first respondent as a member of that community. First respondent in fact conceded on several occasions that he lives as a Christian. Therefore his election is to be declared void. First respondent is a Christian, by birth. In Christianity there is no caste. There is no Christian Scheduled Caste. Even if a Christian is converted into Hinduism, he cannot claim the status of a Scheduled Caste. Scheduled Caste belong to Hindu religion only by birth and there cannot be conversion to a Scheduled Caste. As first respondent was born as a Christian and lived as a Christian, he is disqualified to contest the election in a reserved Constituency for Scheduled Caste. The caste certificate issued to the first respondent and accepted by the Returning Officer to prove his caste is invalid in law. First respondent claimed in the nomination paper that he belongs to Pulayan. In the Gazette Notification, he claimed that he is a Cheramar. Under the Constitution (Scheduled Castes) Order, if a person falls in a particular caste, he cannot change from one caste shown in that order to the other. If first respondent claims that he is a Pulayan, he cannot be a Hindu Cheramar, as Cheramar caste and Pulayan caste are distinct and separate castes under the Presidential Order and cannot be inter-changed as one likes. As there is no caste as Christian Cheramar, under the Presidential Order, no Christian can declare that he has converted himself to Hindu as Pulayan. As first respondent claimed as Pulayan and produced certificate to show that he is a Cheramar, he is ineligible to contest the election. In addition, first respondent played a fraud on the Constitution and members of the Scheduled Castes, as he robbed genuine members of the Scheduled Caste, an opportunity to contest the elections. Even during the election, he was canvassing for votes claiming that he is a Christian so as to influence

large number of Christian voters in the Constituency and to corner their votes. The votes obtained by first respondent shall be treated as void. At any rate, a substantial portion of the same is to be declared invalid and if those votes are declared invalid, second respondent, the candidate who secured the next highest number of votes, is to be declared elected.

3. First respondent in the written statement contended that at the time when the nominations were scrutinized neither the petitioner nor respondents 2 to 9 raised any objection that first respondent is not a member of the Scheduled Caste or that he is not qualified to fill a seat reserved for that community. Returning Officer accepted the nomination of the first respondent because he was qualified to contest the election as a candidate reserved for Scheduled Caste. The allegations raised in the election petition are not correct. First respondent was a member of Scheduled Caste on the date of submission of the nomination paper and his election is not liable to be declared void or set aside. At the time of the birth of the first respondent his father was a converted Christian. He was converted to Christianity from Cheramar caste. Mother of the first respondent belongs to Pulaya community. First respondent was not shown as a Christian in the school records or the S.S.L.C. book as alleged. He was admitted in Standard I on 31-5-1979 in S.N.V.L.P. School, Manjoor. The admission register shows that he belongs to a Hindu Pulaya. From 21-5-1983 to 1-4-1989 he studied in V.K. V.M N.S.S. High School, Manjoor in Std. V to X. The school records clearly show that he belongs to Hindu Pulaya community. In the S.S.L.C. book the religion of the first respondent is shown as Hindu and Caste is Pulaya, Scheduled Caste. There is no basis for the contrary allegations. Attempt is to destabilise the mandate of the people of the Constituency without any basis. The Caste certificate was not obtained exerting political clout or influence or pressurizing the Tahsildar. Village Officer, Manjoor on 26-6-1979 issued a community certificate stating that first respondent belongs to Hindu Pulaya Community. On 4-6-1991 Tahsildar, Vaikom had issued a caste certificate that he belongs to Hindu Pulaya community. Those certificates were issued by the authorities after proper enquiries. The caste certificate obtained by first respondent and produced before the Returning Officer was also issued after due enquiry. First respondent has never attended any Church. He and his family have been living as Hindu Pulaya. They never attended in the Church. The pleadings in the election petition are vague and names of the Churches or the dates are not disclosed. Pulaya community accepted the first respondent as a member of that community. The contrary allegations are false. Even though father of first respondent is a converted Christian, he lived as a Hindu Pulaya. All the members of the family of the first respondent including his father are members of Kerala Pulaya Mahasabha, Branch No. 1368 of Manjoor. His father died on 20-9-2008. The burial was conducted in accordance with the formalities of Pulaya community, as per Hindu rites. The body was buried

in the burial place owned by Pulaya Community. Having brought up as a member of Pulaya community and having accepted by the community as a member of that caste, as the mother of the first respondent belongs to Pulaya community, first respondent has been living as a Hindu Pulaya a Scheduled Caste in the same village, to which family of his mother belongs. The marriage of the sister of the first respondent was held on 11-7-1999 at Manjoor Government High School observing all formalities of Pulaya community. Her husband is also a Pulaya. Kerala Pulaya Mahasabha issued a certificate on 11-7-1999 with regard to that marriage. First respondent has been brought up as a member of Hindu Pulaya Community and he was subjected to the same disabilities and disadvantages attached to Scheduled Caste. Under Explanation to Section 2 of Hindu Succession Act, any child legitimate or illegitimate, one of whose parents is a Hindu and is brought up as a member of the community, group or family to which such parent belongs or belonged is also a Hindu and as first respondent was brought up as a member of Hindu Pulaya Community, he is a Hindu as provided under Explanation (b) of Section 2 of Hindu Succession Act. The grandfather of the first respondent converted from Cheramar caste to Christianity. Still he lived as a member of Pulaya community. That community accepted him as a member of that community. In 2008 first respondent's father reconverted into Hinduism in order to complete the legal requirement. First respondent was born and brought up as a member of Hindu Pulaya community. He was accepted by the members of that caste. As his father belonged to Cheramar Christian community, first respondent caused to make a notification in the gazette to eradicate any doubt which may linger in the minds of the public that he may be a Cheramar Christian, though in the eye of law such a notification is not warranted as he was born and brought up as a Pulaya. When parents or one of the parents are converted from Hinduism to Christianity and a child was born after their conversion, when they subsequently embrace Hinduism and members of the caste, to which the parents belonged prior to that conversion, accept them as a member within the fold, it cannot be questioned. Cheramar and Pulaya are one and the same caste included in Entry 54 of Part VII Constitution (Scheduled Caste) Order, 1950. The contrary allegations are not correct. First respondent has not played any fraud as alleged. The candidature of the first respondent in Alathur Constituency was known to the public as it was published in the media that he is a probable candidate and no objection was raised by any member of that caste. His election is not void and cannot be declared invalid or set aside.

4. Only second respondent appeared through a counsel and respondents 3 to 9 did not appear. Even second respondent did not file written statement.

5. ISSUES: On the pleadings the following issues were framed :

(1) Whether first respondent is a member of Pulaya Caste and whether he is qualified to represent the Parliamentary Constituency under section 4 (a) of Representation of the People Act?

(2) Whether election of the first respondent to Alathur Parliamentary Constituency is liable to be declared void and set aside.

(3) Whether second respondent is entitled to get declared as duly elected from Alathur Parliamentary Constituency?

EVIDENCE : Petitioner was examined as PW1. He examined then District Collector, who was the Returning Officer as PW2 and then Tahsildar who issued the Caste Certificate as PW5 and the Village Officer who submitted the report based on which the Caste certificate was issued by the Tahsildar, as PW6. In addition the Vicar of St. Xavier's Church, Mannarappara was examined as PW3 and a native of Manjoor who was the President of Manjoor Mandalam Congress Committee and a member of Grama Panchayat, was examined as PW4. Exts. P1 to P4 and Exts. X1(a) to X1 (c) were marked. On the side of the first respondent, he was examined as RW1. His mother was examined as RW2. The President of Manjoor Sakha of Kerala Pulaya Mahasabha was examined as RW3 and a resident of Manjoor belonging to Pulaya Caste was examined as RW4. The Headmistress of S.N.V.L.P. School was examined as RW5 to prove the admission register of S.N.V.L.P. School, where he was admitted to the first standard. The Headmistress of V.K.V.M.N.S.S. High School was examined as RW6 to prove the admission register extract of the first respondent. The Tahsildar, Vaikom who issued a caste certificate to the first respondent in 1991 was examined as RW7. The Secretary of Manjoor Branch of Kerala Pulaya Maha Sabha was examined as RW 8. The President of Manjoor Edayoram Branch of Kerala Pulaya Maha Sabha was also examined as RW 9.

Contentions : Case of the petitioner is that the parents of the first respondent were Christians and first respondent was born as a Christian and therefore he cannot be a member of scheduled caste and he is not qualified to stand for election in a Constituency reserved for scheduled caste. Petitioner contended that under section 4(a), a person shall not be qualified to be chosen to fill a seat in the House of the People, unless he is a member of any of the Scheduled Castes whether of that State or any other State, in case the seat is reserved for scheduled caste. Under clause (24) of Article 366 of Constitution of India, Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purpose of the Constitution and Part VIII of the Constitution (Scheduled Caste) Order, 1950 under Entry 54, nine separate castes are shown which are scheduled castes under the said entry and each such caste is distinct and separate. The contention is that Pulayan and Cheramar are two different castes, though both are scheduled castes and if a

person is Pulayan, he cannot be a Cheramar and if he is a Cheramar, he cannot be a Pulayan. According to the learned senior counsel appearing for the petitioner, no court is competent to add or subtract or make an inquiry regarding the entries in the Presidential Order as it is final and when the Presidential Order shows Pulaya caste is distinct from Pulayan Caste and Cheramar Caste, first respondent cannot raise a contention that Pulayan Cheramar and Pulaya are one and the same caste and no evidence could be let in and court is incompetent to hold that Pulayan, Cheramar and Pulaya are all different names of one and the same caste. When first respondent was born to Christian parents, after they were converted as Christians, by birth he is a Christian and therefore he cannot claim the status of a scheduled caste. Even though Ext.P1 caste certificate issued to the first respondent shows that he is a member of the Pulaya caste, Ext. P1 caste certificate is void as it was obtained fraudulently and therefore it cannot be relied on. When the State of Kerala promulgated an order providing a forum and a procedure for issuing caste certificate that one belongs to a scheduled caste, a scheduled caste certificate can be issued only in accordance with the provisions of Kerala (Scheduled Caste/Scheduled Tribe Regulation of Issuing Community Certificate) Act, 1996. Such certificate can be issued only if an application in the prescribed form was submitted and that too after a due inquiry as provided therein and can be issued only in the prescribed form. Ext.P1 caste certificate was not issued by PWS as admitted by him under the provisions of the said Act and admittedly no application was submitted in the prescribed form provided therein. It was issued only under political pressure, without any inquiry. When Ext.P1 shows that it was issued based on Ext.X1 (b) Suddhi certificate and Ext.P2 Gazette Notification, which show that first respondent claimed only that he is a Cheramar, no certificate could have been issued to the effect that he is a member of Pulaya community and on that sole reason, the caste certificate is to be ignored. It is also contended that when Ext. P2 Gazette Notification shows that, on the date of publication of the Gazette, first respondent 'was living as a Cheramar Christian, he cannot be heard to contend that he was born or lived as a Hindu Pulaya and in any event if first respondent claims that he belongs to Cheramar caste he cannot be a pulaya and if that be so, first respondent is disqualified to contest the election as a Hindu Pulaya. The contention is that under sub-section (2) of Section 33, a candidate is not qualified to stand for election in a Constituency where the seat is reserved for scheduled castes, unless his nomination paper contains a declaration by him specifying the particular caste of which he is a member and the area in relation to which that caste is a scheduled caste and when the nomination paper was submitted claiming that he belongs to Pulaya, a scheduled caste and Ext.P1 was produced in support of the claim, Ext.R1(a) and Ext. P2 based on which Ext.P1 caste certificate was issued show that first respondent claimed that he is a Cheramar and not Pulaya, his nomination paper could not have been accepted as conditions provided under sub-section (2) of Section 33 is

not fulfilled. It is contended that PW2 the Returning Officer on his own admission did not verify the Presidential Order to find out whether the caste claimed by the first respondent is a scheduled caste as provided thereunder or suddhi certificate and the Gazette Notification relied on in Ext. P1 caste certificate to find out whether first respondent belongs to Pulaya caste is correct or not and no proper inquiry was conducted as provided under section. 36 of Representation of the People Act, 1951 and therefore the nomination paper submitted by the first respondent should not have been accepted and in any case as first respondent is not qualified to be a candidate for a Constituency reserved for Scheduled Caste, his election is to be declared void and hence it is to be set aside. Learned senior counsel argued that the evidence of PW2 establishes that he did not conduct an inquiry as provided under section 36 of Representation of the People Act and whether anybody raised an objection or not, it is for the Returning Officer as provided under section 36, to find out whether first respondent was qualified to stand for the election in Alathur Constituency reserved for Scheduled Caste and for that purpose PW2 was bound to consider whether first respondent belongs to Pulaya caste as claimed and if PW2 had made an inquiry as contemplated under section 36, it would have been revealed that first respondent does not belong to Pulaya caste as provided under the Presidential Order and claimed by the petitioner and when he has claimed only to be a member of Cheramar caste, the nomination paper should not have been accepted. It is also contended that when first respondent is a Christian by birth and no valid conversion was proved, even if there is conversion when there is no evidence to prove that Pulaya Community has accepted first respondent as a member of that caste and hence he is not qualified to be a candidate in a Constituency reserved for Scheduled Caste and on that ground the election is to be set aside. Learned Senior Counsel argued that whether there was a conversion and if so whether it is valid and whether he was accepted by the community are all matters within the exclusive knowledge of the first respondent and so burden of proof is on him to establish these facts and when there is no evidence to prove a valid conversion and acceptance by the Pulaya community to their caste, first respondent cannot claim to be a member of Scheduled Caste and hence he is not qualified to be a candidate and therefore the election is to be declared void. It is argued that if the election of the first respondent is declared void the candidate who got the next highest votes is to be declared elected.

6. First respondent contended that when election is not challenged on the ground that there was improper acceptance of the nomination paper, petitioner is not entitled to challenge the election based on sub-section (2) of Section 33 of Representation of the People Act, especially when there is no pleading based on Section 33(2) of Representation of the People Act. It is also argued that evidence of petitioner as PW1 establish that he has no personal knowledge on the allegations raised or the

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correctness of the allegations made and even though it is contended that the parents of the first respondent are converted Christians, the defence that mother of the first respondent belongs to Pulaya caste and is not a Christian or converted Christian was not challenged and though the father of the first respondent was born to a converted Christian, he was living as a Hindu suffering all the inequalities and disqualifications and first respondent being the son of a Pulaya mother was brought up as a Hindu Pulaya and there is no contra evidence. It is also contended that the allegations in the petition that the school registers show that first respondent is a Christian is falsified by the admission registers and it shows that the election petition is filed without any bona fides and out of political spite. It is also contended that Pulaya, Pulayan, Cheramar and Pulayar are all one and the same caste and the synonyms castes are included in Entry No. 54 and originally only Pulayan and Cheramar were included and entry 54 of Part VII of Constitution (Scheduled Castes) Order was amended subsequently by the Parliament under Act 61 of 2002. In addition to Pulayan and Cheramar, other synonyms castes were also included in the said entry and the report of the Standing Committee and the objections and reasons for the delay shown in the Bill presented before the Parliament establish that the amendment was necessitated for inclusion of synonyms in respect of a caste in the existing list, clubbing castes in the existing list, which are similar to one another from social and anthropological point of view and inclusion of new castes based on social, educational and economic backwardness etc. and seven synonyms castes were added to Entry 54 as they are all the same caste like Cheramar and Pulayan. It is argued that though court cannot add or subtract any entry in the Constitution (Scheduled Castes) Order it does not apply to an entry already in existence and the evidence establish that Cheramar and Pulaya and Pulayan are all the same caste and therefore election of the first respondent cannot be challenged on the ground that he is Cheramar and not Pulaya. It is argued that when the parents are converted to Christianity from Hinduism, Christian religion cannot be thrust on the minor and the minor children are free to chose their religion and they could either be Christian or Hindu. Even though father of the first respondent was converted to Christianity the mother was never converted and she continued to live as a Hindu Pulaya and the children born to her including the first respondent, were brought up as Hindu Pulaya. The school registers establish that first respondent was brought up and studied as Hindu Pulaya and therefore he is not disqualified to contest the election for a Constituency reserved for Scheduled Caste. The provisions of Kerala Scheduled Caste/Scheduled Tribe Regulation of Issuing Community Certificate Act, 1996 does not apply to the election for the Parliament or the Legislative Assembly and therefore the caste certificate issued cannot be challenged on the ground that it was not issued as provided under the said Act or the Rules provided thereunder. Exts.R4 and R5 caste certificates were issued as early as 1991 and 1998 and they establish that Ext. P1

caste certificate was not issued using any political pressure as alleged and first respondent. When similar certificate was issued in 1991, he was not a political leader at all. Petitioner who claims that first respondent is a Christian by birth and lived as a Christian, did not adduce any evidence and the evidence of PW4 who was examined for that purpose, disprove the case and evidence of RW3, RW8 and RW9 establish that first respondent was living as a Pulaya and was accepted by the community and hence he is qualified to be a candidate for a Constituency reserved for Scheduled Caste and the election petition is only to be dismissed.

7. Second respondent has only reiterated the contentions raised by the petitioner though no written statement was filed.

ISSUES 1 and 2 : Though it was contended in the election petition that an objection was raised on the acceptance of the nomination paper submitted by the first respondent on the ground that first respondent is not qualified to stand for election in a Constituency reserved for Scheduled Caste as he is not a member of Scheduled Caste and this was not considered by the Returning Officer at the time of scrutiny and Ext. P1 caste certificate produced by the first respondent was blindly accepted by the Returning Officer without verifying the correctness of the caste certificate as it was issued based on suddhi certificate and a Gazette Notification which do not support the case that first respondent that he is a member of Pulaya caste, the election is challenged under clause (a) of sub-section (1) of Section 100, and not under Section 100 (i) (iv) of Representation of the People Act and election is not sought to be set aside on the ground that nomination paper of the first respondent was improperly accepted. When the election petitioner has not challenged the election on the ground that there was improper acceptance of the nomination paper, the question whether nomination paper was received after proper scrutiny under Section 36 of the Act is not relevant.

8. Section 36 of the Representation of the People Act provide for scrutiny of nomination papers. Under sub-section (2) of Section 36, the Returning Officer shall decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such summary inquiry, if any as he thinks necessary, reject any nomination on any of the grounds (a), (b) or (c) provided therein. Under clause (a), the nomination paper is liable to be rejected if the Returning Officer finds that on the day fixed for the scrutiny of nominations, the candidate is not qualified or disqualified for being chosen to fill the seat either under Article 84, Article 102, Article 173 or Article 191 of Constitution of India. Under clause (c) of Article 84, a person shall not be qualified to be chosen to fill a seat in Parliament unless he possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Under clause (a) of Section 4 of Representation of the People Act a person shall not be

qualified to be chosen to fill a seat in the House of the People unless in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary Constituency. Therefore unless a candidate is a member of any of the Scheduled Castes, whether of that State or of any other State, he is not qualified to be a candidate in a Constituency reserved for the scheduled castes. Article 341 of the Constitution of India provides that President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof by notification specify the castes, races or tribes or parts or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes, in relation to that State or Union Territory as the case may be. Under Clause 24 of Article 366 Scheduled Castes is defined as means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution. The Constitution (Scheduled Castes) Order, 1950 was issued by the President, in exercise of the powers conferred under Clause 2 of Article 341 of the Constitution of India providing that subject to the provisions of the Order, the castes, races or tribes or parts of or groups within castes or tribes specified in Part I to XXI of the Schedule to the order shall in relation to the States to which those parts respectively relate, be deemed to be scheduled castes so far as regards member thereof resident in the localities specified in relation to them in those parts of the schedule. Therefore if the candidate belongs to a caste, named as scheduled caste in Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950 he is qualified to be a candidate in a Constituency reserved for scheduled castes. Sub-section (2) of Section 33 of the Representation of People Act provides that in a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains declaration by him specifying the particular caste or tribe which he is a member and the area in relation to which the caste or tribe is a Scheduled Caste or, as the case may be a Scheduled Tribe of the State. Therefore by virtue of sub-section (2) of Section 33, a candidate while submitting his nomination paper in a Constituency reserved for Scheduled Caste, shall declare in his nomination paper the particular caste of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste. It is not sufficient to declare in the nomination paper that he is a member of the scheduled caste. He must specify the particular caste of which he is a member and also the area in relation to which the caste is a scheduled caste. If it is not so declared, at the time of scrutiny the Returning Officer is to reject the nomination paper. Eventhough the nomination paper of the first respondent was accepted the acceptance was not taken as a ground, as petitioner has no case that the nomination paper of the first respondent

was accepted improperly. Therefore the election of the first respondent cannot be set aside on the ground that there is non-compliance with the mandate provided under sub-section (2) of Section 33.

9. It is the case of the election petitioner that first respondent is not a Hindu or a member of scheduled caste and therefore he is not qualified to contest the election for a Constituency reserved for scheduled castes. It is the specific case that first respondent is a Christian and there is no scheduled castes in Christian religion and there cannot be a conversion from Christianity to a scheduled caste and even if there was any such conversion, first respondent cannot claim that he is a member of the scheduled caste. It is the specific case that though first respondent claimed that he belongs to Pulayan one among the scheduled castes provided in Constitution (Scheduled Castes) Order the Gazette Notification produced by the first respondent shows that he is a Cheramar and not Pulayan. It is contended that as per Entry 54 of Part VIII of the Constitution (Scheduled Castes) Orders, Pulayan and Cheramar are different castes though both are scheduled castes, and if first respondent is a Cheramar, he cannot be a Pulayan and therefore first respondent is not entitled to contest the election as a Pulayan. It is also contended that Gazette Notification shows that he was a Christian Cheramar till 19-8-2008 the date of Ext.P2 Gazette Notification and if at all there is any conversion, it is under Ext. X1(b) Suddhi certificate issued by Aryasamajam. Ext. X1(b) also shows that first respondent is a Cheramar and therefore he cannot be a Pulayan. Learned senior counsel argued that if there is a valid conversion by the parents of the first respondent, it is a fact within the special knowledge of the first respondent and when first respondent did not establish any such conversion by the parents and the evidence of first respondent as RW1 establishes that he was born to a Christian family, by birth he is a Christian and the subsequent conversion in 2008 is only a ruse to claim the benefit of reservation which is not permissible in law and therefore first respondent is not qualified to stand for the election. Learned senior counsel Sri. Ramakumar relying on the decision of the Apex Court in *State of Maharashtra v. Milind and Others* (2001) 1 SCC (4) and in *State of Maharashtra and Others v. Mana Adim Jamat Mandal* (2006) 4 SCC (98) argued that no inquiry is permissible by any court whether Pulayan and Cheramar are the same castes because as per the Presidential Order, they are different castes. Relying on the decisions of Apex Court in *C. M. Arumugam v. S. Rajgopal* (AIR 1976 (1) SCC 863. The Principal, Guntur Medical College, Guntur and Others v. Y. Mohan Rao (1976) 3 SCC (411), *Punit Rai v. Dinesh Chaudhary* (2003) 8 SCC 204) and the Division Bench decision of this Court in *J. Das v. State of Kerala* (AIR 1981 Kerala 164) it was argued that by conversion first respondent cannot claim status of a member of scheduled caste and even if there was a reconversion by a member of a scheduled caste to Hinduism, unless he was accepted by the members of his caste to their fold, on such conversion, the benefit

available to a member of the scheduled caste cannot be claimed by him. It was pointed out that evidence of PW6 the Village Officer and PW 5 the then Tahsildar who issued Ext. P1 caste certificate to the effect that first respondent is a member of Pulaya caste establish that Ext. P1 certificate is valueless and on the face of it is unreliable and is to be ignored. It was pointed out that Ext. P1 the caste certificate was issued based on the Gazette Notification and the Suddhi certificate and neither Ext. P2 Gazette Notification nor Ext. XI(b) Suddhi Certificate shows that first respondent belongs to Pulayan caste and therefore such a certificate could not have been issued. It is also argued that the evidence of PW5 establishes that the certificate was not issued after proper inquiry and was issued on the date of the application itself and in any case the application to get the certificate was not submitted by the first respondent as provided under the Kerala (Scheduled Caste/Scheduled Tribe Regulation of Issuing Community Certificate) Act, 1996 and no declaration as provided under the Act was submitted and the certificate is also not in the prescribed form and therefore based on Ext. P1, first respondent cannot claim the status of a member of Pulaya caste. Relying on the decision of the Apex Court in *Sobha Hymavathi Devi v. Setti Gangadhara Swamy and Others* (2005) 2 SCC (244) it was argued that Ext. P1 caste certificate which was procured by the first respondent is to be eshewed, as it is only a fraud played on the Constitution. Relying on the decision of the Apex Court in *Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and Others* (2006) 1 SCC (212), *Meera Kanwaria v. Sunita and Others* (2006) 1 SCC (344), it was argued that the burden is on the first respondent to establish that he is a member of Pulaya caste and therefore he is qualified to stand for the election. Relying on the decision of the Apex Court in *Prabhudev Mallikarjunaiah v. Ramachandra Veerappa and another* 1996 (4) SCC (431) learned senior counsel argued that court cannot give any direction that Cheramar caste is synonymous to Pulaya caste and therefore first respondent is not qualified to stand for the election in Constituency reserved for Scheduled Castes or to represent the Constituency which is reserved for scheduled castes claiming to be a member of Pulaya caste.

10. Learned counsel appearing for the first respondent argued that though it was contended by the petitioner that parents of the first respondent are Christians, the only evidence let in by the petitioner, apart from examining himself was that of PW3, the Vicar of St. Xavier's Church, Mannarapara and PW4 the President of Manjoor Mandalalam Congress Committee and the evidence of PW1 establishes that he raised the allegations in the election petition without any inquiry. It was pointed out that even though PW1 contended that mother of the first respondent who was examined as RW2 is a Christian, the evidence of RW1 that she was never converted to Christianity and was born as a Pulaya and is living as Pulaya was not challenged and the evidence of RW2 establishes that she is a Pulaya. Learned counsel submitted that though

the father of the first respondent Kuttappan was born to a converted Christian, the grandfather of the first respondent was also a Pulaya before his conversion and Kuttappan lived as a Pulaya and married RW2 a Pulaya and brought up the children including the first respondent as Pulaya and therefore first respondent is a member of Pulaya community. Learned counsel argued that first respondent could at best be the son of an intercaste parents and when the mother of first respondent is admittedly a Pulaya, first respondent is entitled to opt to live as a Hindu, Pulaya and he was born and brought up and is living as Pulaya and Ext. R1 (a) SSLC book, Ext. R2 the extract of admission register whereunder he was admitted in the 1st standard and Ext. R3 extract of admission register whereunder he was admitted in the Vth standard show that first respondent is a Hindu Pulaya. It was also pointed out that at an undisputed point of time on 4-6-1991 the Tahsildar had issued Ext. R4 caste certificate to the effect that first respondent is a Pulaya and again in 1998 Ext. R5 caste certificate was also issued to the same effect. Ext. R6 the certificate issued by the Kerala Pulaya Mahasabha with the evidence of RW9 the then President, RW8 the Secretary and RW4 a resident of Manjoor as well as a member of Kerala Pulaya Mahasabha were pressed to establish that Pulaya community had accepted the first respondent and his family as members of Pulaya community and therefore first respondent is qualified to stand for election as a member of scheduled caste. It was pointed out that though Ext. XI (b) Suddhi certificate was obtained and for that purpose Ext. P2 Gazette Notification was made, the Suddhi was performed and notification was published only to remove the cloud, as first respondent was born to a converted Christian father and based on Ext. P2 Gazette Notification or Ext. XI(b) Suddhi certificate it cannot be said that first respondent was either a Christian till the publication of the Gazette Notification or that he is a Cheramar. Learned counsel argued that Cheramar and Pulaya is one and the same caste and as per the Presidential Order, 1950 item 54 included only Pulayan and Cheramar and with effect from 17-12-2002 by Act 61 of 2002 item 54 was amended including Pulayan, Cheramar, Pulaya, Pulayar, Cherama, Cheraman, Wayanad Pulayan, Wayanadan Pulayan, Matha, Matha Pulayan and the said Act was enacted based on the Constitution Scheduled Castes Orders (Amendment) Bill, 2001 and the said bill and the statement of objects and reasons establish that the amendment was necessitated for correction of spelling errors, inclusion of synonymous communities, imposing area restrictions, checking linguistic and phonetic variations and clubbing certain entries etc. and therefore it is clear that Pulayan and Cheramar and Pulaya are all the synonymous names of one and the same caste. Relying on the decision of a learned single Judge of this Court in *Thevan v. Union of India & Others* (1985 KLT 30) which was followed by another learned single Judge in *C.K. Balakrishnan v. Union of India and another* 1990(2) KLT (835) it was argued that Pulaya and Pulayan and Cheramar are all synonymous names of the same caste and in such

circumstances, first respondent is qualified to stand for election and represent a Constituency reserved for scheduled caste.

11. Though election petitioner was examined as PW1, his evidence establish that he has no personal knowledge with regard to the religion or caste of the first respondent and his evidence is based on his inference gathered on Ext. P1, Ext. P2 and Ext. X1(b). Evidence of PW1 does not throw light into the controversy whether first respondent is professing Hinduism or was professing Christianity as claimed by PW1 in the election petition. PW3, Vicar of St.Xavier's Church, Mannarapara was examined to prove that first respondent and his parents are Christians. PW3 was also summoned to produce the marriage register maintained by the Church. A certified photocopy of the register was marked as Ext. P3 and PW3 had given evidence with reference to the original register brought by him. Though PW3 was examined to prove that first respondent and his parents are Christians, PW3 has no such case. From the evidence of PW3, it cannot be said that either the parents of the first respondent or the first respondent are converted Christians as claimed by the petitioner. The documentary evidence on his side are Exts. P1 the caste certificate issued by PW5 and Ext.P2 Gazette Notification and Ext. X1 file relating to the issuance of Ext. P1 caste certificate apart from Ext.P4 the article published in Mathrubhumi based on an interview conducted on the first respondent. At the same time, though PW1 denied the suggestion in cross examination that mother of the first respondent is not a Pulaya, evidence of RW1 on that aspect was not challenged in cross examination. The evidence of RW2 the mother also shows that she is a Pulaya. Exts.R2 and R3 the respective admission registers prepared by SNVLP School, Manjoor and VKVM NSS High School at the time when first respondent was admitted respectively in Std.I and V show that he was admitted in the school showing that he is a Hindu Pulaya.

12. The evidence of RW2 Bhavani, the mother of first respondent and RW1, the first respondent, establish that RW2 is a Hindu Pulaya. The evidence of RW4, 8 and 9 the member and office bearers of Kerala Pulaya Mahasabha also corroborates the evidence of RWs. 1 and 2 on this aspect. Though it was suggested to RW2 that her husband and his father, brother and sister are all Christians, there is no material whatsoever to support the case of the petitioner that the mother of the first respondent is a Christian. On the evidence, it can only be found that mother of the first respondent is a Hindu Pulaya. True, first respondent in the written statement contended that his parents are not converted Christians and at the time of evidence, RW1 admitted that his father was born to a converted Christian and therefore his father was a Christian by birth. The question is whether for the reason that first respondent was born to a Christian father, he is a Christian and not a Hindu Pulaya to which his mother belongs. Learned senior counsel relied on Ext.P2 Gazette Notification published by first respondent to prove that till 19-8-2008 first respondent admitted that he is a Christian and by Ext. X1(b) Suddhi

certificate he became a Hindu Cheramar and even if there is a conversion, it could only be to Hinduism and he cannot claim the status of Pulaya. Ext. P2 Gazette Notification is in Malayalam. Ext. P2(a) is its English translation. It reads:—

“It is hereby notified for the information of all the concerned authorities and the public by P. K. Biju, Prayanparambil House, Manjoor South P.O., Manjoor Village, Vaikom Taluk, Kottayam District, holder of S.S.L.C Book No. B. 289619 with Reg. No. 18159 of March, 1989.

I, P.K. Biju, a member of Cheramar Christian community have embraced Hinduism in the same name vide Suddhi certificate dated 24-7-2008 issued by Aryasamajam Thiruvananthapuram. Hereafter I will be a member of Cheramar Hindu Community.

This change will come into effect in all records related to me.”

Ext.X1 (b) Suddhi certificate 24-7-2008 shows that under the auspicious of the All India Dayananda Salvation Mission first respondent belonging to Chramar Christian community, holder of community certificate No. 1188/2008 dated 19-6-2008 issued from Manjoor Village Office is admitted to Vedic (Hindu) Dharma, after performance of Suddhi according to Aryasamaj rites and will be known thereafter as Biju P.K. which was admittedly his name even earlier. The note in the certificate is to the effect that Holder of Suddhi certificate belongs to Cheramar (Scheduled Caste) of Hindu community. The argument of the learned senior counsel is that Ext.P2 Gazette Notification is an admission by the first respondent that he was a Cheramar Christian till 24-7-2008 the date of Ext.P2 Gazette Notification and after 24-7-2008 alone he claims that he is a member of Hindu Cheramar and that too not Hindu Pulaya. True, petitioner is definitely entitled to make use, of the admission of the first respondent. But though admission is binding on the first respondent, he is definitely entitled to explain under what circumstances that admission was made. It is the specific case of the first respondent that as he was born to a converted Christian father, though his mother is a Hindu Pulaya, to remove the cloud of suspicion due to the fact that he is the son of a converted Christian father though he was born to a Pulaya mother and was brought up as a Pulaya and living as a Pulaya, he was advised to undergo conversion and for that purpose as is mandatory, Gazette Notification is to be made and for that purpose, Ext. P2 Gazette Notification was made and he had also undergone suddhi as stated in Ext. X1(b) and therefore the admission in Ext. P2 or the statement in Ext. X1 (b) in law cannot be taken as an admission that he belongs to Christian religion till, July 2008. The explanation is credible and reliable.

13. RW5, the Headmistress of SNVLP School, Manjoor was examined to prove Ext. R2 admission register. The evidence of RW1 establishes that he studied in SNVLP School, Manjoor till Vth standard. The evidence of RW5 establishes that Ext. R2 is the certified copy of the admission

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register extract relating to the first respondent when he was admitted in that school in the 1st Standard on 31-5-1979 under admission No. 2227. Ext. R2 with the evidence of RW5 establishes that his father is shown as Kuttappan and the religion and caste as Hindu Pulaya. The Headmistress of VKVM NSS High School, Manjoor was examined as RW6. Her evidence establishes that Ext. R3 the extract of the admission register was issued from that school with reference to the entries in the original admission register as well as the transfer certificate which were brought by the witness to the court at the time of her examination. The evidence of RW6 with Ext. R3 establishes that first respondent was admitted in that school in Standard V on 21-5-1983 and he left the school on 1-4-1989 after obtaining a transfer certificate. Ext. R3 with the evidence of RW6 also establishes that the name of the father of the first respondent is Kuttappan and the first respondent a Hindu Pulaya. The evidence of RW7, Tahsildar, Vaikom with Ext. R4 and R5 establish that he had issued Ext. R4 caste certificate on 4-6-1991 and Ext. R5 caste certificate on 29-9-1998 to the first respondent whereunder it was certified that first respondent is a Hindu Pulaya. Ext. R6 certificate issued by Kerala Pulaya Mahasabha with the evidence of RW8, the Secretary, RW9, the then President show that first respondent and his family were members of Kerala Pulaya Mahasabha, and only a member of Pulaya community will be admitted as a member of Kerala Pulaya Mahasabha. Evidence of RW8, RW9 and RW4 show that first respondent and his family were accepted as members of Pulaya caste by that community. As against this evidence, petitioner did not adduce any evidence to prove that first respondent was either professing Christianity or was attending any Christian Church or has been living as a Christian or was not accepted by the members of the Pulaya community as members of their caste.

14. The challenge against Ext. P1 caste certificate issued by PW5 are two fold. Firstly it was argued that the caste certificate was not issued following the procedure provided in Act 11 of 1996 and the application was not filed and the certificate was not issued in the forms prescribed under the Act or the Rules and no declaration was made along with the application and the evidence of PW6, the Village Officer whose report was relied on by PW5 to issue the caste certificate establish that the certificate was issued on the same day on which the application was submitted and no proper inquiry was conducted and in any case when Gazette Notification and the Suddhi certificate do not show that first respondent was a Hindu Pulaya and instead he was a Christian Cheramar who claimed to be a Hindu Cheramar by conversion, Ext. P1 certificate that he belongs to Pulaya caste can only be ignored. It is argued that the certificate is a fake.

15. As is clear from the preamble to the Kerala Scheduled Castes and Scheduled Tribe Regulation of issuing Community Certificate Act 11 of 1996 which came into force on 1-10-1996, it was enacted in order to curb

effectively the evil practices of securing certificates as members of Scheduled Castes and Scheduled Tribes in the State, by those who do not belong to the Scheduled Caste or Scheduled Tribe and claim the benefits of reservation and other benefits meant for the Scheduled Castes and Scheduled Tribes. The Act was hence enacted to regulate the issuance of community certificate. Section 3 of the Act provides that anything contained in any other law for time being in force, any person belonging to any of the scheduled castes or scheduled tribes claiming any benefit, concession, protection, exemption or reservation provided to such or Castes or Tribes either for any appointment in public services or for admission into or educational institutions, exclusively intended for members the Scheduled of Castes or Scheduled Tribes or for contesting for the seats reserved for them in any educational institution in the State or outside the State for the students of the State or local authority or co-operative institution, shall prove his claim by a certificate issued for the purpose under the Act by the competent authority in the prescribed manner. Section 4 provides for an application to be filed by the person who claims a certificate, in the prescribed form. Section 5 provides for issuance of a caste certificate in the prescribed form, after following the prescribed procedure and satisfying about the genuineness of the claim. Ext. P1 certificate is not issued in the prescribed form. The evidence of PW5 establish that first respondent did not file an application in the prescribed form and did not make a declaration as provided under the Rules. Evidence of PW5 also establishes that he did not conduct any inquiry and has only relied on the report submitted by PW6 the Village Officer. Ext. X1 file proved by the evidence of PW5 shows that the application for the certificate was submitted by the first respondent claiming that he belongs to Hindu Pulaya caste and a report dated 13-3-2009 was obtained from PW6 the Village Officer and Ext. X1 (a) (which is the same as Ext. P1) was issued on 13-3-2009 the same days. The evidence of PW5 and PW6 establish that on receipt of the application, PW5 called for report from PW6 and PW6 recorded the statements at 2.15 p.m. and submitted the report on the same day and immediately thereafter PW5 issued the caste certificate. The argument is that therefore there was no proper inquiry and as the certificate was not issued in the prescribed form, it cannot be relied on.

16. Section 3 of Act 11 of 1996 makes it absolutely clear that the caste certificate to be issued under the Act is only for claiming “any benefit, concession, protection, exemption or reservation provided to such castes or tribes either for any appointment in public services or for admission into educational institutions, exclusively intended for members of the Scheduled Castes or Scheduled Tribes or for contestant for the seats reserved for them in educational institution in the State or outside the State for the students of the State or local authority or co-operative institution”. The certificate is not for submitting to contest an election for either Parliament or Legislative Assembly. An identical provision in Andhra Pradesh

(Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993) was considered by the Apex Court in *Sobha Hymavathi Devi V. Setti Gangadhara Swamy and Others* (2005) 2 SCC (244) and held that the certificate, does not embrace an election to the Legislative Assembly or to the Parliament and therefore the court is not bound by the certificate in exercise of the jurisdiction under the Representation of People Act in an election petition and is not precluded from going into the question of status of a candidate or making an independent inquiry into that question, in spite of production of a caste certificate as provided under the said Act. As Act 11 of 1996 is not applicable to an election to the Parliament or Legislative Assembly, for the reason that Ext. P1 was not issued following the procedure provided under the said Act or is not in the prescribed form or on the ground that the application was not submitted in the prescribed form, it cannot be said that the caste certificate cannot be relied on by the Returning Officer.

17. True, the evidence of PW5 and PW6 with, Ext. X1 file establish that Ext. P1 caste certificate was issued to the effect that first respondent is a member of Pulaya caste. Ext.X1 (b) and Ext.P2 show that first respondent claimed that he is a Cheramar. The question is whether the said admission would prevent the first respondent from showing that it was either a mistaken admission or it was not a valid admission with regard to his caste. Along with Ext. P2 and Ext.X1(b), Ext. R1(a) the relevant page 3 of the SSLC book of the first respondent was also made available to the Tahsildar to issue the caste certificate. Ext. R1(a) shows that in the S.S.L.C. book of the first respondent, his religion and caste are shown as Hindu Pulaya. Therefore it cannot be said that there was no material to show that first respondent was a Hindu Pulaya and the only material available was the claim that he was a Cheramar evidenced by Ext.P2 Gazette, notification or Ext. X1(b) Suddhi certificate. The case of the first respondent is that he sought a Suddhi certificate and for that purpose he was made to believe that a Notification like Ext. P2 is necessary and therefore he published the Gazette notification, though he never lived as a Christian or Christian Cheramar. Case of the first respondent is that there is no difference between a Cheramar caste and Pulaya caste, as both are synonymous castes and therefore he stated that he is a Cheramar instead of specifically showing that he is a Pulaya. The argument of the learned senior counsel is that Pulaya and Cheramar are two different and distinct castes coming under Entry 54 of Part VIII of Presidential Order as amended by the Parliament and nobody is entitled to contend that they are synonymous castes and no inquiry is permitted by law to show that both are the same castes.

18. While considering the question whether the first respondent has validly explained his admission in Ext.P2 Gazette notification as well as the statement in Ext.X1(b) Suddhi certificate, first respondent is entitled to show that he made the assertion of caste on the belief that they are

one and the same caste and are synonymous. The question whether an inquiry is permissible under law to show that both are different castes, could be decided later.

19. The Constitution of (Scheduled Caste) Order 1950 was promulgated in exercise of powers conferred by clause (1) of Article 341 of Constitution of India by the President after consultation with the Governor of the State concerned. Part VIII of the Schedule relates to Kerala. Entry 54 as then stood reads "Pulayan Cheramar". Though Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act 108 of 1976) came into effect with effect from 8-9-1976 providing for inclusion in and exclusion from, the list of Scheduled Castes and Scheduled Tribes of certain castes and tribes, for the readjustment of representation of parliamentary and assembly constituencies, there was no change in Entry 54 of Part VIII of the Schedule. Subsequently by Amendment Act 61 of 2002 the Constitution (Scheduled Castes) Order, 1950 as amended by 1976 Act was amended. As per the amendment certain changes were made to Part VIII relating to Kerala. Original entry 54 was substituted as follows:—

"Pulayan	Cheramar,
Pulaya	Pulayar,
Cherama	Cheraman,
Wayanad	Pulayan,
Wayanadan	Pulayan,
Matha	Matha Pulayan."

It was Constitution Scheduled Castes Orders (Amendment) Bill, 2001 which was passed by the Parliament and enacted as Act 61 of 2002. The bill shows that the Bill was referred to the Standing Committee on Labour and Welfare and the Committee submitted the Report. 22nd report of the Standing Committee on Labour and Welfare (2002) shows that the proposed amendment broadly fall under the following seven categories :

- “(i) inclusion of synonyms in respect of a caste in the existing list;
- (ii) clubbing castes in the existing list, which are similar to one another from social and anthropological point of view.
- (iii) corrections in spelling of the caste, in the existing list, keeping in view the linguistic and phonetic variations;
- (iv) imposition of area restriction in the specific castes in the existing list, keeping in view relative social, educational and economic position;
- (v) inclusion of new castes based on social, educational and economic backwardness;
- (vi) modifications in the existing entries in accordance with directives of Hon'ble High Court of Orissa in the case of *Narayan Behra v. State of Orissa* (OJC No. 247 of 1978) and the Supreme Court in *Bhaiya Ram Munda v. Anirudh, Patar* (A.I.R. 1971 SC 2533); and

- (vii) deletion of communities from the list, in respect of the States of Arunachal Pradesh, Kerala and the Union Territory of Dadra and Nagar Haveli.

20. The Standing Committee noted that the changes proposed are of three categories viz. inclusion of eight new communities, exclusion of 24 communities and modification of synonyms, area restrictions and merger of communities in respect of 49 communities. The committee approved the amendments in Part VIII of the Schedule I relating to Kerala are exclusion 7, inclusion 1 and modification 11 making a total of 19 amendments. Entry 54 was substituted by adding eight new communities. The amendment was for inclusion of synonyms in respect of a caste in the existing list or clubbing castes in the existing list, which are similar to one another from social and anthropological point of view or corrections in spelling of the caste, in the existing list, keeping in view the linguistic and phonetic variations or imposition of area restriction in the specific castes in the existing list, keeping in view relative social, educational and economic backwardness and deletion of communities. It is thus by Act 61 of 2002, Entry 54 was substituted by adding to the existing Pulayan, Cheramar Communities Pulaya, Pulayar, Cherama, Cheraman, Wayanad Pulayan Wayanadan Pulayan, Matha and Matha Pulayan were included. Though in the nomination submitted by the first respondent he had declared that he is a member of Pulaya caste, in Ext. R1 (a), R4 and R5 his caste is shown as Hindu Pulaya Ext. P1 certificate also shows that he is Pulayan. In the written Statement first Respondent contended that he belongs to Pulaya Caste. As per Entry 54 Pulaya, Pulayan and Pulayar are different Communities. Learned Counsel appearing for the first respondent submitted that the pleading in the written statement that he belongs to Pulaya caste was for the reason that Pulayan and Pulayar are synonyms and it is one and the same caste. Learned Counsel pointed out that this court in Thevan's case (supra) also declared that Pulaya and Pulayan is the same caste. At that time entry 54 does not take in Pulaya, but only Pulayar. A learned Single Judge in Thevan's case considered the question whether Pulayan notified in the Constitution (Scheduled Castes) Order, 1950 and Pulaya are the same or different communities. After elaborately quoting the Travancore State Manual and in the light of the decision of the Apex Court in Basavalingappa v. D. Munichinnappa and Others (AIR 1965 SC 1269) this court held that Pulaya community is the same as Pulayan Community notified as a scheduled caste under entry 54 of Part VIII of Schedule I of the Presidential Order and both are only synonyms and there is no difference. It was therefore declared that Pulaya is a scheduled caste within the meaning of Entry 54 in the list of scheduled caste in the Presidential Order. Another learned Single Judge in C. K. Balakrishnan's case (supra) followed the said decision. Learned senior counsel argued that in view of the later declaration of law by the Constitution Bench, the court cannot make any such declaration and therefore the said decision is not good law. The question

whether the court can make such a declaration is not to be considered at this stage and that could be considered at a later stage.

21. People of India National Series Vol. VIII "Communities, Segments, Synonyms, Surnames and Titles" by K.S. Singh, published by Anthropological Survey of India 1996 Edn. It provides in Appendix A the different castes and Appendix B the communitywise list of Synonyms, titles, surnames and segments. In Appendix B at page 1694 Pulayan is mentioned with synonyms. it reads:—

"PULAYAN

Synonyms: Cheramar,

Cheruman (Kerala)"

The castes and tribes of Southern India by Edgar Thurston K. Rangachari 1993 Edition, Volume VI shows Pulayan—at page 225 as follows "See Cheruman and Thanda Pulayan". Cheruman is dealt with in page 45 of Vol. II. It reads :—

Cheruman —The Cherumans or Cherumukkal have been defined as a Malayalam caste of agricultural serfs, and as members of an inferior caste in Malabar, who are, as a rule, toilers attached to the soil. In the Madras Census Report, 1891, it is stated that "this caste is called Cheruman in South Malabar and Pulayan in North Malabar. Even in South Malabar where they are called Cheruman, a large sub-division numbering over 30,000 is called Pula Cheruman."

The Travancore State Manual by V. Nagam Aiyar Vol. II 1999 at page 403 shows Pulayas as follows :—

"Pulayas. ORIGIN AND DESIGNATION. The word 'Pulaya' means a Polluted man. In British Malabar and Cochin the Pulayas are known as Cherumas. They are an aboriginal race peculiar to Malabar and are found distributed all over Travancore, North of Nanjanad, but are scarce in the Tamil taluks of the South."

Scheduled Castes revised Edn. Vol. II by K. S. Singh 1995 Edn., at page J 101 deals with Pulayan and Cheramar. It reads:—

"Pulayan Cheramar. Also known as Pula Cheramar and Pulaya Cheramar, the cheramar are distributed in the Kanyakumari District of Tamil Nadu. The word Cheramar is derived from the historical Chera Kingdom and Cheramar refers to the people of Chera country. According to the 1981 census, their population, returned as Pulayan, Cheramar, is 6581 (3400 males and 3181 females)."

In the light of the texts on castes, it could be found that Pulayan and Cheramar are not distinct and different communities. If that be so, explanation of the first respondent that it is because of his impression that Cheramar and Pulayan is one and the same community he

made a Gazette Notification as he belongs to Cheraamar is to be accepted. Therefore based on the mistaken Gazette Notification that he belongs to Cheraamar, it cannot be found that first respondent is not a Pulayan especially when his school admission register from the very beginning shows that he is Hindu Pulaya.

22. When the evidence shows that the father of the first respondent is a converted Christian and his mother a Pulaya, the question is whether the offspring to that couple is a Christian or a Pulaya? Before considering that aspect it is to be born in mind that it is not disputed that the grandfather of the first respondent was a Hindu, who was converted to Christianity. Kuttappan, the father of the first respondent was born to the converted Christian parents. Evidence of RW2, the mother of the first respondent establishes that her marriage with Kuttappan was an intercaste marriage and that marriage was not performed as a christian marriage. That aspect was also not challenged at the time of evidence. Therefore the result is that, first respondent was born to a converted Christian father whose father was originally a Hindu and was converted to Christianity. The mother of the first respondent was born as a Pulayan. As per the evidence, she continued to live as Pulayan even after marriage.

23. The Constitution Bench of the Apex Court in *The Principal Guntur Medical College, Guntur and others v. Y. Mohan Rao* (1976) 3 SCC (411) considered the question whether a person born of scheduled caste parents after their conversion to christianity can be considered a member of the scheduled caste in the light of the earlier decisions in *S. Rajagopal v. C.M. Armugham* (AIR 1969 SC (101)) and *C. M. Armugham v. S. Rajagopal* (AIR 1976 SC 939). In *Rajagopal's case* (supra) *Rajagopal* contested the election for the Mysore Legislative Assembly election to 68 KGF Constituency in 1967 a Constituency reserved for scheduled caste claiming that he is a member of Adi Dravida Hindu, a scheduled caste. Armugham the defeated candidate filed an election petition to declare that the election is void as he is a Christian and not Adi Dravida Hindu. *Rajagopal* was converted to christianity in 1949 and when he embraced christianity, he ceased to belong to Adi Dravida Caste. Having regard to the seven circumstances enumerated in the judgment, it was held that during 1967, he was professing Hindu religion. Their Lordships then considered the question as to the effect of his reconversion to Hinduism and held that all the decided cases laid down the principle that "on reconversion to Hinduism a person can become a member of the same caste in which he was born and to which he belonged before having been converted into another religion". It was pointed out that the main basis on which these decisions proceeded was that if members of the caste accept the reconversion of a person of their caste as a member it should be held that he does become a member of that caste, even though he may have lost membership of that caste on conversion to another religion. Finding

that even if these principles enunciated to the decision was valid *Rajagopal* did not satisfactorily establish the said requirements laid down and "failed to establish that he became a member of the Adi Dravida Hindu Caste after he started professing the Hindu religion". Their Lordships observed that "whether the membership of a caste can be acquired by conversion to Hinduism or after reconversion to Hinduism is a question on which we have refrained from expressing our opinion because on the assumption that it can be acquired, we have arrived at the conclusion that appellant must fail in the appeal. Hence the appeal filed by him challenging the decision of the High Court setting aside the election was dismissed. In the next General Election to the Mysore Legislative Assembly, which took place in 1972 *Rajagopal* again filed his nomination paper claiming that he is a scheduled caste as he is a Adi Dravida Hindu. Its acceptance was objected to by Armugham. Consequently the nomination paper was rejected on the ground that he is not a Hindu Adi Dravida on reconversion. When Armugham was declared elected, the election was challenged before the High Court on the ground of improper rejection of his nomination paper. The High Court set aside the election finding that the nomination paper of *Rajagopal* was rejected improperly. It was challenged before the Apex Court by Armugham. It is thus the question was again considered by a Constitution Bench of the Honourable Supreme Court. It was found that the question whether *Rajagopal* abandoned Hinduism and embraced christianity in 1949 which is essentially a question of fact, and if before the High Court Armugham had conceded in view of the decision in the earlier case, the question does not survive for consideration and the High Court refrained from examining the question on merits and proceeded on the basis that it stood concluded by earlier decision, he is not entitled to challenge it and the case is to be proceeded on the basis that he was converted to christianity in 1949. Their Lordships held that the question whether on conversion to christianity, he ceased to be a member of the Adi Dravida Caste is a mixed question of fact and law concession made before the High Court will not preclude him from challenging the findings on that question. Their Lordships therefore held:—

"It is true that this Court held in the earlier case that, on embracing christianity in 1949, the 1st respondent ceased to be a member of the Adi Dravida caste, but this decision given in a case relating to 1967 General Election on the basis of the evidence led in that case, cannot be res judicata in the present case which relates to 1972 General Election and where fresh evidence has been adduced on behalf of the parties, and more so, when all the parties in the present case are not the same as those in the earlier case. It is, therefore, competent to us to consider whether, on the evidence on record in the present case, it can be said to have been established that, on conversion to christianity in 1949, the 1st respondent ceased to belong to Adi Dravida caste."

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The necessity for reservation of seats for the depressed class, consequent to the development of the caste system resulting in perpetration of social and economic injustice by the so-called higher castes, Their Lordships held :—

“Thus there came into being social hierarchy and stratification resulting in perpetration of social and economic injustice by the so-called higher castes on the lower castes. It was for this reason that it was thought necessary by the Constitution makers to accord favoured treatment to the lower castes who were at the bottom of the scale of social values and who were afflicted by social and economic disabilities and the Constitution makers accordingly provided that the President may specify the castes and these would obviously be the lower castes which had suffered centuries of oppression and exploitation which shall be deemed to be Scheduled Castes and laid down the principle that seats should be reserved in the legislature for the Scheduled Castes as it was believed, and rightly, that the higher castes would not properly represent the interest of these lower castes.”

It was held that the correct test for determining the question is the following test pointed in *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram* (AIR 1954 SC 236).

“What we have to determine are the social and political consequences of such conversion and that, we feel, must be decided in a common sense practical way rather than on theoretical and theoretic grounds. Looked at from the secular point of view, there are three factors which have to be considered (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or ex-communicate the convert and the individual himself desires and intends to retain his old social political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body, the views of the new faith hardly matter.”

Their Lordships held that what is material is how the caste looks at the question of conversion and does it outcaste or ex-communicate the convert or does it treat him as continuing within its fold within its despite his Conversion. The Constitution Bench held :—

“If the convert desires and intends to continue as a member of the caste and the caste also continues to treat him as a member, notwithstanding his

conversion, he would continue to be a member of the caste and as pointed out by this Court “the view of the new faith hardly matter”. This was the principle on which it was decided in by the Court in *Chatturbhuj Vithaldas Jasani's case* (supra) that Gangaram Thaware, whose nomination as a Scheduled Caste candidate was rejected by the Returning Officer, continued to be a Mahar which was specified as a Scheduled Caste, despite his conversion to the Mahanubhav faith.

13. Paragraphs 2 and 3 of the Constitution (Scheduled Castes) Order, 1950 also support the view that even after conversion, a person may continue to belong to a caste which has been specified in the Schedule to that Order as a Scheduled Caste. Paragraph 2 provides that the castes specified in the Schedule to the Order shall be deemed to be Scheduled Castes but paragraph 3 declares that notwithstanding anything contained in Paragraph 2, that is, notwithstanding that a person belongs to a caste specified as a Scheduled Caste, he shall not be deemed to be a member of the Scheduled Caste, if he professes a religion different from Hindu or Sikh religion. Paragraphs 2 and 3 read together thus clearly recognise that there may be castes specified as Scheduled Castes which comprise persons belong to a religion different from Hindu or Sikh religion and if that be so, it must follow a fortiori, that in such castes, conversion of a person from Hinduism cannot have the effect of putting him out of the caste, though by reason of Paragraph 3 he would be deemed not to be a member of a Scheduled Caste.”

It was held that it cannot be laid down as an absolute rule uniformly applicable in all cases that whenever a member of a caste is converted from Hinduism to Christianity, he loses his membership of the caste and it would depend on the structure of the caste and its rules and regulations and there are castes particularly in South India where this consequence does not follow on conversion since such castes comprise both Hindus and Christians. Their Lordships held :—

“Whether Adi Dravida is a caste which falls within the category or not is a question which would have to be decided on the evidence in the case.”

Considering the question whether on reconversion to Hinduism Rajagopal could again become a member of Adi Dravida caste, assuming that he ceased to be a Hindu Adi Dravida on such conversion to Christianity, the Constitution Bench analysing the decision on the point held :—

“These cases show that the consistent view taken in this country from the time *Administrator-General of Madras v. Anandachari* (1886) ILR 9 Mad 466 (supra) was decided, that is since 1886, has been that on reconversion to Hinduism, a person can once again become a member of the caste in which he was

born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. There is no reason either on principle or on authority which should compel us to disregard this view which has prevailed for almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be reconverted to Hinduism there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged provided of course the community is willing to take him within the fold. It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favoured treatment is given to him by the Constitution. Once such a person ceased to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a Scheduled Caste. But when he is reconverted to Hinduism, the social and economic disabilities once again revive and become attached to him because these are disabilities inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognised as anything but a Mahar or a Koli or a Mala after reconversion to Hinduism and he would suffer from the same social and economic disabilities from which he suffered before he was converted to another religion. It is, therefore, obvious that the object and purpose of the Constitution (Scheduled Castes) Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion. We accordingly agree with the view taken by the High Court that on reconversion to Hinduism, the 1st respondent could once again revert to his original Adi Dravida caste if he was accepted as such by the other members of the caste."

Finally on the twelve circumstances accepted by the High Court to hold that Rajagopal subsequent to February 1967 was accepted into their fold by the members of Adi Dravida caste and therefore during the material time viz. 1972, he was an Adi Dravida professing Hindu religion as required by paragraphs 2 and 3 of the Constitution (Scheduled Castes) Order, 1950, the Constitution Bench held that High Court was right in coming to the conclusion that at the material time Rajagopal belonged to Adi Dravida caste so as to fall within the category of Schedule Castes under paragraph 1 of the Constitution (Scheduled Castes) Order, 1950.

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24. In Guntur Medical College's case (supra) a Five Judge Bench reiterated the principle that there is no absolute rule applicable to all cases that "whenever a member of a caste is converted from Hinduism to Christianity, he loses his membership of the caste" and the question was considered in Arumugam's case (supra) and pointed out that "ordinarily it is true that on conversion to Christianity, a person would cease to be a member of the caste to which he belongs but it is not an inevitable rule and the consistent view taken since 1886 was that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member and there was no reason either on principle or on authority to disregard that view which prevailed for almost a century. The Constitution Bench declared that the said reasoning is equally applicable in a case where the parents of a person converted from Hinduism to Christianity and he is born after their conversion. Their Lordships held:—

"The reasoning on which this decision proceeded is equally applicable in a case where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste to decide whether or not to admit a person within the caste. Since the caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing member. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste, for as pointed out by Krishnaswami Ayyangar, J. in Durgaprasada Rao v. Sudarsanaswami, AIR 1940 Mad.513, "in matters affecting the well being or composition of a caste, the caste itself is the Supreme judge". (emphasis supplied). It will, therefore be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold."

In such a case the question will be whether on such reconversion he was accepted by the community of that caste. The Apex Court in Kailash Sonkar v. Maya Devi (AIR 1984 SC 600) considered the question in the light of the subsequent decision in Ambalagan v. B. Devarajan (AIR 1984 SC 411). Posing the question if after a person is converted to a new religion, does his caste revives if he is reconverted to his old religion and, if so, under what circumstances, their Lordships held that starting from the

Privy Council to the present day, authorities of the High Courts and the Supreme Court have laid down certain norms and conditions under which a caste could revive and they are:— (1) where the converttee exhibits by his actions and behaviour his clear intention of abjuring the new religion on his own volition without any persuasion and is not motivated by any benefits or gain, (2) where the community of the old order to which the converttee originally belonged is gracious enough to admit him to the original caste either expressly or by necessary intendment, and (3) Rules of the new Order in permitting the converttee to join the new caste and unless the conditions are fulfilled the loss of caste on conversion is complete and cannot be revived. Their Lordships were also observed that considering the present set up and the circumstances prevailing in our modern society, it will be difficult to insist on the second condition namely the insistence on the members of the community of the caste to admit the converttee on reconversion to the original faith because such a course of action may lead to dangerous consequences and ill-conceived exploitation. The curse and cancer of untouchability despite thirty years of social reforms still persist and no quarter should be given to further prosecution of the members of the scheduled castes who as we often find are subjected to all kinds of indignities, insults and are looked down upon as slaves or vassals, meant merely to serve the members of the higher caste. Their Lordships held that the main test “should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it” and the reconversion should not be only “a ruse or a pretext or a cover to gain mundane worldly benefits so that reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste. In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition, if no exception or protest is lodged by the community members in which case the caste would revive on the reconversion of the person to his old religion.” Their Lordships held:—

“When a person is converted to Christianity or some other religion the original caste remains under eclipse and as soon as during his/her lifetime the person is reconverted to the original religion the eclipse disappears and the caste automatically revives. Whether or not the revival of the caste depends on the will and discretion of the members of the community of the caste.”

In Ambalagan's case (*supra*) Their Lordships considered the question of reconversion and its effect in South India. Their Lordships held:—

“These precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for reconversion to Hinduism of a person who had earlier embraced another religion. Unless the practice of the caste makes it necessary, no expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him. In fact it may not be accurate to say that he regains his caste, it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deeprooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion. In Andhra Pradesh and in Tamil Nadu, there are several thousands of Christian families whose forefathers became Christians and who, though they profess the Christian religion, nonetheless observe the practice of caste. There are Christian Reddies, Christian Kammas, Christian Nadars, Christian Adi-Andhras, Christian Adi Dravidas and so on. The practice of their caste is rigorous that there are intermarriages with Hindus of the same caste but not with Christians of another caste. Now, if such a Christian becomes a Hindu, surely he will revert to his original caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the fold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the scheduled castes, who embrace other religion in their quest for liberation but return to their old religion on finding that their disabilities have clung to them with great tenacity. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion.”

25. A Three Judges Bench of the Apex Court in Punit Rai's case (*supra*) considered the question of the claim of the caste born to intercaste couple and held that if he is considered to be a member of the scheduled caste, he has to be accepted by the community. The Full Bench of this Court in *Indira v. State of Kerala* (2005 (4) KLT 119) elaborately considered all the earlier decisions in the light of the Constitutional provision under Articles 341 and 342 held that children born of inter-caste marriage which either of the parents belong to scheduled castes/scheduled tribes should have a caste status either that of the mother or that

of the father and if father belongs to scheduled caste or scheduled tribe, the child may inherit his caste from his father by operation of personal law. But even then, in order to get the benefit of Article 15 (4), 16(4) and 16(4A) read with Article 341 and 342 of the Constitution, the person has to further establish that he still uses the caste of his father and is subjected to the same disabilities, disadvantages, sufferings of that caste or tribe and unless and until the person establishes that those factors, the mere fact that by virtue of the personal law he has inherited his caste status from his father or mother by itself would not be sufficient to show that he is still subject to the same disadvantages. Even if father belongs to scheduled caste or scheduled tribe child could be brought up in the company of the mother, who belongs to forward caste without subjecting him to any sufferings, disadvantages incapacity or ignominy which would normally be suffered by the members of a scheduled caste or scheduled tribe, and vice versa like mother belongs to a scheduled caste and father belongs to non-scheduled caste and the child is brought up by the father and would not be subjected to the same disadvantages and sufferings if he is a member of the scheduled caste and scheduled tribe.

26. The first respondent is proved to be the son born RW2 a Hindu Pulaya, by Kuttappan a converted Christian, whose parents were originally members of Pulaya caste. The question is whether first respondent was born and brought up as a Pulaya and has inherited the caste status of his mother and were subjected to the same sufferings, disadvantages, incapacity and ignominy which would normally be suffered by the members of the Pulayan caste, which is a scheduled caste as per the Constitutional (Scheduled Caste) Order. As stated earlier, the evidence of mother shows that first respondent was brought up as a Hindu Pulaya. His school admission register and SSLC book establish that he was brought up and educated as a Hindu Pulaya. As declared by the Apex Court in *Desh Raj v. Bodh Raj* (2008) 2 SCC 186 the entry relating to the caste of a student in the school admission register is relevant and important evidence to determine the caste. The evidence of RWs 2, 8 and 9 establish that first respondent was accepted by the Pulaya Community as a member of their caste. As against these overwhelming evidence, there is no evidence whatsoever on the side of the petitioner that first respondent is professing Christianity or living as a Christian. Being the son born to a converted Christian father in a Hindu Pulaya mother, the religion of the parents or either of the parents cannot be thrust upon him. It is up to him to choose his religion on attaining the age of discretion. He can choose to follow any of the religions of his parents. If he chooses to go back to the old religion of either of the parents he is competent to opt it. But there should be clear and conclusive conduct to show that he has reconverted the old religion and abjured the new religion. When by such conversion the claim is that he thereby gained the original caste, it should satisfactorily be shown that he was

accepted by the members of the old order without objection or exception. The evidence establish that first respondent was brought up and educated as a Hindu Pulaya. It is also proved that he is living as a Hindu Pulaya practising the rites and rules of that caste. Evidence also establish that members of the Pulayan caste has accepted first respondent as a member of that caste. As against this, there is no contra evidence. Therefore on the evidence, it can only be found that first respondent is a Hindu Pulaya a scheduled caste under entry 54 of Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950. He is thus qualified to stand for election in a Constituency reserved for scheduled caste. As declared by the Apex Court in *Narender Singh v. Mala Ram and another* (1999) 8 SCC 198 when two views are reasonably possible, one in favour of the elected candidate and the other against him, court shall not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate, should uphold his election giving him the benefit of doubt.

27. In view of the Constitution Bench decision of the Apex Court in *State of Maharashtra v. Milind and Others* (2001) 1 SCC 4, no inquiry at all is permissible and no evidence can be let in, to find out and decide whether any tribe or tribal community or part of or group within any tribe or tribal community, is included within the scope and meaning of the entry in the Presidential Order, when it is not so expressly or specifically included. On the facts of the case, it is not at all necessary to consider whether Cheramar and Pulaya are synonyms castes or are two different and distinct castes in this case. There is no evidence to disprove the case of the first respondent that he is professing Hinduism and is a member of Pulaya caste. The contention that no inquiry is permissible whether Pulayan and Cheramar are the same caste or different castes was advanced solely based on Ext. P2 Gazette Notification and Ext. X1(b) suddhi certificate. As stated earlier, first respondent has successfully established that he published Ext. P2 Gazette Notification and also applied and undergone the Suddhi ceremony to obtain Ext. X1(b) Suddhi certificate, not because he was a Christian but because of the necessity to clear the cloud of suspicion on the ground that he was born to a converted Christian father. The reference about Cheramar in Ext. P2 Gazette Notification or in the Suddhi certificate, is not because first respondent does not belong to Pulaya caste or belongs to Cheramar caste. The explanation of the first respondent establish that he effected the publication on the belief that Cheramar and Pulaya castes are the names of one and the same caste. If there is any evidence to prove that first respondent belongs to Cheramar Caste and not Pulaya caste, it would have been necessary to consider whether Cheramar and Pulayan are synonymous castes or not. First respondent has no case that he belongs to Cheramar caste. Petitioner has also no case that first respondent belongs to Cheramar caste. The only case of the election petitioner is that as first respondent claimed in the Gazette Notification that

he is a Cheramar, he cannot be a Pulaya. When the circumstances under which Ext.P2 Gazette Notification was necessitated, is successfully explained by the first respondent, based on the said mistaken assertion alone, first respondent will not become a member of Cheramar caste. If first respondent is not a member of Cheramar caste, his declaration or the publication in the Gazette Notification will not make him a member of the Cheramar caste. When petitioner and first respondent have no case that first respondent is a Cheramar, on the evidence, it can only be found that first respondent is a member of Pulaya caste. He is therefore qualified to stand for election as a candidate in a Constituency reserved for Scheduled Caste. Hence the election of the first respondent to Alathur Parliamentary Constituency is not void. It cannot be declared void. It cannot be set aside as sought for.

Issue No.3 : In view of the finding on issue Nos. 1 and 2 election of the first respondent to Alathur Parliamentary Constituency cannot be declared void. Election of the first respondent cannot be set aside. So also second respondent cannot be declared as duly elected.

Election Petition is therefore dismissed. Registry to communicate the substance of the decision of the Election Petition to the Election Commission and the Speaker of the Lok Sabha immediately and also send an authenticated copy of the judgment to the Election Commission, as mandated under section 103 of the Representation of the People Act, 1951.

M. SASIDHARAN NAMBIAR, Judge

[F. No. 82/KL-HP/(2/2009)/2010]

By Order,

TAPAS KUMAR, Prl. Secy.

APPENDIX

Petitioner's Exhibits :—

- Ext. P1:— Copy of Community Certificate dated 13-3-2009 issued to Sri P.K. Biju.
- Ext. P2:— Copy of Gazette Notification dt. 19-8-2008
- Ext. P2(a):— English Translation of Exhibit P2
- Ext. P3:— True photocopy of page 26 of Vol. IV (II Part) of Marriage register
- Ext. P4:— Published Article in Mathrubhumi.
- Ext. P4(a):— English Translation of Ext. P4.
- Ext. X1:— File from Taluk Office, Vaikom.
- Ext. X1 (a):— Community certificate issued to P.K. Biju.
- Ext. X1 (b):— Copy of Sudhi Certificate dated 24-7-2008.
- Ext. X1 (c):— Certificate dated 12-3-2009 issued to Sri P.K. Biju by KPMS

Respondents Exhibits :—

- Ext. R1(a):— SSLC Book of first respondent.
- Ext. R2:— Extract of Admn. register of SNVLP School, Manjoor.
- Ext. R3:— Extract of Admission register of VKVM NSS High School, Manjoor, relating to P.K. Biju
- Ext. R4:— Caste Certificate dated 4-6-1991 issued to Sri P.K. Biju.
- Ext. R5:— Caste certificate dated 29-9-1998 issued to Sri P. K. Biju.
- Ext. R6:— Certificate dated 22-8-2009 issued to Sri P.K. Biju by KPMS.
- Ext. R6 (a):— English Translation of Ext. R 6.
- Ext. R7:— Vivaha Pathrika relating to Smt. Jayamole.
- Ext. R7 (a):— English Translation of Exhibit R 7.